The lower Court should first determine on evidence the question of fact whether the promissory note was executed in the Straits Settlements or in the Federated Malay States. If the execution was in the Federated Malay States then ruling (a) above applies. If the execution of the promissory note was in the Straits Settlements then the Magistrate must determine the further question of fact as to where it was payable. This, where not expressed, is a question of fact as to the intention of the parties to be deduced from a consideration of the relevant evidence. Then according to the finding of this fact either (b) or (c) above is to be applied.

Order accordingly.

[APPELLATE CIVIL JURISDICTION]
MURRAY-AYNSLEY, J.
July 31, 1939.

PHEE CHUNG SAN v. LIM GIOK.

[PERAK CIVIL APPEAL No. 14 of 1939]

Labour Code (Cap. 154) S. 54(i)—"domestic servant".

A cook in the employ of a kongsi is a "domestic servant" within the meaning of section 54 (i) of the Labour Code and as such is entitled to 14 days' notice of intention to terminate his employment.

APPEAL to the Supreme Court from the decision of the Protector of Chinese, Ipoh, in Ipoh Labour Case No. 124 of 1938.

K. C. Chan, for Appellant.

Respondent, unrepresented.

Murray-Aynsley, J.—The only point in this appeal that calls for comment is the question whether the Respondent is a "domestic servant" for the purposes of Section 54(i) of the Labour Code.

There is a partial definition of "domestic servant" in Section 2 of the Code in the form "domestic servant"

> "includes....and other house, stable or garden servants employed in or in connection with, the domestic services of any public or private dwelling-house or eating-house".

This includes certain persons who would not be included in the classification according to English Law, but in the case of those who are employed in services strictly domestic the position appears to be the same as in England in that persons performing these services are domestic servants although they are not working in a private household but in a hotel, club, or restaurant.

The Respondent in this case is a cook in a kongsi. There is not much in the evidence to explain the nature of this particular kongsi, but I consider that the Respondent is a domestic servant and only entitled to 14 days notice. The amount awarded by the Controller is therefore reduced by $8.00.

No order as to costs.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
MURRAY-AYNSLEY, J.
October 2, 1939.

PHAN KIN THIN v. PHAN KUON YUNG.

[PERAK ORIGINATING SUMMONS No. 246 of 1939]

Will—construction—bequest for "Chin Shong" (ancestral worship)—validity.

A bequest for "Chin Shong" (ancestral worship) is a good gift provided that it is so drawn that infringement of the rule against perpetuities is avoided.

Re Yap Kwan Seng, 4 F.M.S.L.R. 313 referred to and considered.

ORIGINATING SUMMONS.

The principal question propounded before the Court was, whether a gift of shares of a Chinese testator's estate for his father's *Chin Shong* was a good bequest.

Cases referred to:—

(1) *Low Cheng Soon & Others v. Low Chin Piow & Another,* 1 M.L.J. 15.

(2) *Bourne v. Keane,* 1919 A.C. 815.

(3) *Re Yap Kwan Seng,* 4 F.M.S.L.R. 313.

(4) *Yeap Cheah Neo v. Ong Cheng Neo,* L.R. 6 P.C. 382.

(5) *Choa Choon Neoh v. Spottiswoode,* 1 Kyshe 216.

(6) *West v. Shuttleworth,* 2 M. & K. 684.

Mervyn Farr for the applicant. The will took effect as from the date of the death of deceased, which was the 29th January 1929.

On the 29th January 1929, the Perak Order in Council was in full force and effect, and Chinese law and custom was recognised in the F.M.S. (vide Recognition of Chinese Laws Order in Council No. 23/1893 *Voules* Volume 1 page 610).

This Order was repeated by Enactment No. 12/1929, known as The Distribution Enactment 1929, in August 1929.

Under the terms of the Perak Order-in-Council adoption is recognised, and adopted sons are entitled to the same legal rights as legitimate sons. And no man may will away his property from his sons. The property must be divided to a share in the property other than for maintenance and dowry.

On an intestacy in this case therefore, the devolution of any property is not governed by the Distribution Enactment 1929 No. 12/1929, incorporating the English Law on the subject, and should devolve on the two sons.

As to the gift being void for Superstitious purposes, although I relied on a Judgment of Mr. Justice Terrell in Singapore Suit No. 699/1925, *Low Cheng Soon & Others v. Low Chin Piow & Another,*[1] which quoted no authorities for this decision, I found that I could not overcome the decision in the case of *Bourne v. Keane,*[2] which established that a bequest for masses is not superstitious and is further a charitable purpose. No F.M.S. case, or any other Colony case could be found to declare a bequest of this nature was for a superstitious use.

The case of *Re Yap Kwan Seng,*[3] was quoted by me as an authority that the English rule against Perpetuities applied to the F.M.S. in which Mr. Justice Sproule followed the Colony cases of *Yeap Cheah Neo v. Ong Cheng Neo*[4] and *Choa Choon Neoh v. Spottiswoode*[5] in holding that a bequest of this kind is not a charity.

I argued that the case of *Yeap Cheah Neo v. Ong Cheng Neo*[4] and *Choa Choon Neoh v. Spottiswoode*[5] distinguished a case of this kind from the case of *Bourne v. Keane*[2], and that a distinction is clearly shown that the bequest is not charitable if the object is limited to the benefit of a particular person or class of persons, but is charitable as in the case of *Bourne v. Keane*[2] if the object is not so limited.

There could be no question here that the gift not being for charitable purposes, did offend the rule against perpetuities.

Respondents unrepresented.

Murray-Aynsley, J.—In this case the testator left certain shares of his estate to his father's "Chin Shong." The question arises whether this is a good bequest. If not the further question arises as to the destination of the property so bequeathed.

As regards the bequest to the "Chin Shong" we have the authority of certain cases from the Colony and one case from the F.M.S.

In the case of *Re Yap Kwan Seng,*[3] Sproule, J. held that a bequest of this type was a perpetuity and that the English Rule against Perpetuities applied to the F.M.S. He followed the Colony cases in holding that a bequest of this kind is not a charity. (*Yeap Cheah Neo v. Ong Cheng Neo*[4] and *Choa Choon Neoh v. Spottiswoode,*[5]. These cases all avoided declaring that such a purpose was a superstitious use although in the Colony cases *West v. Shuttleworth,*[6] was cited in support of the decisions.

Now the fact that *West v. Shuttleworth* has been overruled in *Bourne v. Keane*[2] was not cited in the case of in *Re Yap Kwan Seng*[3]. The case of *Bourne v. Keane*[2] established that a bequest for Masses is not superstitious and further it seems a charitable purpose.

As regards the first point I think it is clear that the Colony cases were not decided on the ground that bequests of this kind were superstitious although in one fairly recent case this additional ground was given in holding such a bequest void. But as regards the question of charitable purpose I think that the local cases are unaffected. In *Choa Choon Neoh v. Spottiswoode*[5] an elaborate description was given by Maxwell, C.J. of the ceremonies connected with such a bequest as the present one which may be contrasted with the doctrine of the Mass set out in the judgments in *Bourne v. Keane*[2]. I think that a distinction must be drawn between the purpose of the two observances, that one is limited as to its object to the benefit of a particular person, the other is not so limited, and this is the difference between what is not and what is a charitable purpose.

The result is that such a bequest is perfectly good like a bequest for the up-keep of a tombstone provided that the bequest is so drawn that the rule against perpetuities is not infringed, a matter which should not be beyond the ingenuity of local conveyancers.

I gave my decision on the other points orally at the hearing. I do not think that they give rise to any difficulties.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
October 16, 1939.

DRIS BIN TAIB v. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 72 of 1939]

Road Traffic Enactment, 1937, Sec. 80 (i)—whether driver can be guilty of offence under—"using